STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

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Analysis of Enrolled House Bill 5356

Topic:	Corporations
Sponsor:	Representatives Huizenga
Co-Sponsors:	Representatives Meisner and Clemente
Committee:	House New Economy and Quality of Life Senate Economic Development and Regulatory Reform
Date Introduced:	October 24, 2007
Date Enrolled:	December 18, 2008
Date of Analysis:	December 4, 2008

Position: The Department of Labor & Economic Growth supports the bills.

Problem/Background: From time to time the Business Law Section of the Michigan State Bar proposes changes in Michigan's corporation laws. The proposed changes are usually technical in nature and are designed to address changes in business practices and keep Michigan's law in step with similar laws across the country.

Description of Bill: The bill amends the Business Corporations Act as follows:

- Amendments to permit business entity conversions, including the granting of dissenters' rights to shareholders of a corporation that converts to another entity.
- New language is inserted in the BCA relating to interested director transactions.
- The BCA would also be amended to provide that no review of an indemnitee's standard of conduct would be required where indemnification is mandatory pursuant to the act.
- Chapter 7B, the Control Share Acquisitions Act, would be repealed.
- A certificate of dissolution is effective upon receipt by the Administrator if certain criteria specified in the bill are met.
- Various technical amendments, including elimination of the requirement that incorporators sign articles of incorporation in ink and allowing limited liability companies to act as registered agents.

Summary of Arguments

Pro: Michigan's Control Share Acquisitions Act has not fulfilled its purpose. It has not prevented costly and divisive hostile takeovers. In committee testimony it was described as "a trap for the unwary" by a spokesman for the Business Law Section of the State Bar. More effective methods exist to prevent hostile takeovers, including poison pills, staggered director terms, and multiple classes of voting stock.

State anti-takeover laws have generally been ineffective. Pennsylvania, which arguably has the strongest such law in the nation, was unable to prevent a hostile takeover of Conrail by Norfolk Southern.

It is important that Michigan's business entity laws be flexible. Corporations ought to be able to easily convert their form to a limited liability company or other form if such an organization better meets their needs.

Con: Michigan's Control Share Acquisitions Act was enacted for a purpose. Michigan jobs are still at risk in hostile takeovers. It makes sense to provide some protection to Michigan workers and communities from the economic upheaval caused by such acquisitions.

Michigan's law was amended in 2003 to make it conform more closely to the model in Delaware. We should not repeal our law now so soon after that effort. Furthermore, a recent study published in the *Yale Law Review* concludes that "anti-takeover protections are correlated with success in the incorporation market; adding antitakeover statutes significantly increases the ability of states to retain their local companies, as well as their ability to attract out-of-state incorporations". We should not be quick to walk away from Michigan's law until the benefits and costs are more closely examined.

Fiscal/Economic Impact

(a) Department

Budgetary: An undetermined number of conversions will increase the work load of the Corporation Division.

Revenue: A new $50 fee will generate an undetermined amount of revenue.

Comments:

(b) State

Budgetary: The bills will have no direct impact on the state budget.

Revenue: The bills will have no direct impact on other state revenues.

Comments:

(c) Local Government

Comments: The bills will have no direct impact on local government.

Other State Departments: No other state departments are directly affected.

Any Other Pertinent Information: This bill was originally part of a three bill package with House Bills 5357 and 5358. The other bills were introduced and provisions were incorporated in

House Bill 5356 to deal with the impact of a Court of Appeals decision in *Miller v Allstate Insurance Company*. The *Miller* decision had a very negative impact on licensed professions seeking to organize a corporation because it would have forced many of them to organize as professional corporations. The Department of Labor & Economic Growth had significant concerns regarding the impact of the *Miller*-related changes on choice of business entity by licensed professions. The Supreme Court ruled on the *Miller* case and resolved the professional license issues favorably from the perspective of the department. The pre-*Miller* status quo with respect to choice of business entity was restored. As a result, there was no need for the other bills or the *Miller* related provisions in House Bill 5356. These have been dropped from the package.

Administrative Rules Impact: There is no administrative rulemaking authority in these bills.